

Title 22. Examining Boards

Part 37. Texas Board of Orthotics and Prosthetics

Chapter 821. Orthotics and Prosthetics

Amendments §§821.1-821.9

Repeal §821.11, §821.13

Amendments §§821.15, 821.17, 821.19, 821.21, 821.23, 821.25, 821.27

New 821.28

Amendments §§821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, 821.57

ADOPTION PREAMBLE

The Texas Board of Orthotics and Prosthetics (board) adopts amendments to §§821.1. - 821.7, 821.9, 821.15, 821.17, 821.19, 821.21, 821.23, 821.25, 821.27, 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, and 821.57, the repeal of §821.11 and §821.13, and new §821.28 concerning the licensure and regulation of orthotists, prosthetists, assistants, technicians, students and orthotic and prosthetic facilities. Section 821.35, relating to continuing education is adopted with changes to the proposed text as published in the August 23, 2002, issue of the *Texas Register* (27 Tex Reg 7710). Sections 821.1. - 821.7, 821.9, 821.15, 821.17, 821.19, 821.21, 821.23, 821.25, 821.27, 821.29, 821.31, 821.33, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, and 821.57, the repeal of §821.11 and §821.13, and new §821.28 are adopted without changes to the proposed text and will not be republished.

The amendments cover introduction, definitions, the board's operation, public information, fees, general application procedures, general licensing procedures, examinations for licensure, acquiring licensure as a uniquely qualified person, licensing by examination, licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistance, technician registration, temporary license, provisional license, student registration, accreditation of prosthetic and orthotic facilities, standards, guidelines and procedures for a professional clinical residency, license renewal, continuing education, change of name and address, complaints, professional standards and disciplinary provisions, licensing persons with criminal backgrounds, default orders, surrender of license, suspension of license for failure to pay child support, civil penalty, program accessibility, consumer notification, and petition for the adoption of a rule. The repeals cover licensing by exemption from the license requirements and licensing by examination under special conditions requiring application by the 181st day after rules are adopted. The new section covers upgrading a student registration, temporary license or provisional license.

These sections provide for the licensing and regulation of orthotists, prosthetists, assistants, technicians, students and orthotic and prosthetic facilities. Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 821.1 – 821.57 have been reviewed and the board has determined that the reasons for adopting these sections continue to exist; however the language of these sections has been updated, clarified and simplified. The sections are amended to further protect the public, eliminate unnecessary language, improve grammar and style, correct errors and omissions, harmonize the various sections, harmonize the

sections with the Texas Occupations Code and the Family Code, establish new fees, increase specific existing fees, eliminate references to repealed sections, correct references and keep the rules in Texas Register format. The repeals eliminate sections no longer needed. The new section provides an administrative procedure for converting a student registration, provisional license or temporary license to a regular, renewable practitioner license after the applicant passes the required examination.

The board published a Notice of Intention to Review the sections in the July 21, 2002, issue of the *Texas Register* (25 TexReg 6985). No comments were received regarding the publication of this notice.

**Comment:** One comment was received concerning §821.35. relating to continuing education. The commenter requested that the board consider allowing continuing education credits for participating in activities relating to serving as an examiner for the clinical examination administered by the American Board for Certification in Orthotics and Prosthetics (ABC). The commenter stated that ABC awarded examiners up 23.75 credits for the first time orientation/training is completed and five credits each time thereafter, not to exceed twice within a five-year period. The commenter stated the credits were based in part on the mandatory examiner orientation given before each exam that included a detailed review of pathology, biomechanics, prescription recommendations and anatomy. The exam itself is two days of constant ongoing peer review as to correct orthotic and prosthetic applications and problem solving. Before each exam section, a pre-exam session serves as a “mini” in-service on that topic and specifications of the clinical issues.

**Response:** The board agrees with the commenter regarding the credits earned by examiners. The activities described for the first time orientation is approved by ABC and would be considered to be a “workshop,” which is an activity already accepted by the board for continuing education credit under §821.35(i)(2)(C). No changes were made to the rules based on the comment.

**Comment:** A commenter noted that the word “complete” should be “completed” in §821.19 (d) relating to Licensed Prosthetist Assistant, Licensed Orthotist Assistant, or Licensed Prosthetist/Orthotist Assistant.

**Response:** The board agrees and has made the correction.

**Comment:** A commenter noted that the severity levels in §821.39 (e)(2)(A) (i)-(iii) regarding complaints were in reverse order to the severity levels used for other programs within the Professional Licensing and Certification Division (PLCD). The commenter noted that the severity levels for all the programs in PLCD should follow the same format.

**Response:** The board agrees and has reversed the order of severity. Level I becomes Level III, and Level III becomes Level I, making Level I the highest severity level.

One individual commented on the proposal. The commenter expressed a concern about the ability to receive continuing education credit for the training of examiners and duties performed by examiners. The commenter was neither for nor against the amendments, repeals and new section as proposed.

Other comments that pertained to the correction of a typographical error and the revision of the severity levels were received from staff.

The amendments, new section, and repeals are adopted under Texas Occupations Code, Chapter 605, which provides the Texas Board of Orthotics and Prosthetics with the authority to adopt rules concerning the regulation of orthotists and prosthetists.

The amendments, new section, and repeals affect the Texas Occupations Code, Chapter 605.

**Legend:** (Final Amendments – With additional changes not proposed)

Double underline = New language not proposed

Regular Print = Final language incorporating all proposed changes for final adoption

(No change) = No changes are being considered for the designated subdivision

#### §821.1. Introduction.

(a) Purpose. This chapter implements the Texas Orthotics and Prosthetics Act, Texas Occupations Code, Chapter 605, concerning prosthetic and orthotic regulation.

(b) Content. These sections cover definitions; powers and duties of the board; organization of the board; fees; application requirements and procedures for licensing prosthetists and orthotists; application requirements for provisionally licensing prosthetists and orthotists; application requirements for temporary licensing prosthetists and orthotists; application requirements for licensing orthotist and prosthetist assistants; application requirements for registering orthotist and prosthetist technicians; application requirements for registering orthotist and prosthetist students; upgrading a student registration, temporary license or provisional license; application requirements for accreditation of prosthetic and orthotic facilities; issuance of licenses, temporary licenses, registrations, and accreditations, exemptions to licensure, registration and accreditation; continuing education for license renewal; display of license; registration or accreditation; renewal of license, registration or accreditation; changes in name or address; professional and ethical standards; violations, complaints and disciplinary actions; licensing or registration of persons with criminal backgrounds; and petition for rule making.

#### §821.2. Definitions.

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly suggests otherwise. Words and terms defined in the Orthotics and Prosthetics Act shall have the same meaning in these rules:

(1) Act--The Orthotics and Prosthetics Act, Texas Occupations Code, Chapter 605.

(2) – (16) (No change.)

(17) Licensed orthotist (LO)--A person licensed under this Act who practices orthotics and represents the person to the public by a title or description of services that includes the term "orthotics," "orthotist," "brace," "orthosis," "orthoses," "orthotic," or a similar title or description of services.

(18) (No change.)

(19) Licensed physician – a physician licensed and in good standing with the Texas State Board of Medical Examiners.

(20) Licensed prosthetist (LP)--A person licensed under this Act who practices prosthetics and represents the person to the public by a title or description of services that includes the term "prosthetics," "prosthetist," "prosthesis," "prostheses," "prosthetic," "artificial limbs," or a similar title or description of services.

(21) Licensed prosthetist assistant (LPA)--A person licensed under this Act who helps and is supervised at a prosthetic and/or orthotic facility by a licensed prosthetist responsible for the assistant's acts.

(22) Licensed prosthetist/orthotist (LPO)--A person licensed under this Act who practices both prosthetics and orthotics and represents the person to the public by a title or description of services that includes the terms "prosthetics/orthotics," "prosthetist/orthotist," "prosthetic/orthotic," "artificial limbs," "brace," "prosthesis," "prostheses," "orthosis," "orthoses," or a similar title or description of services.

(23) Licensed prosthetist/orthotist assistant (LPOA)--A person licensed under this Act who assists and is supervised at a prosthetic and orthotic facility by a licensed prosthetist/orthotist or a licensed prosthetist and licensed orthotist responsible for the assistant's acts.

(24) Licensee--Includes a person or facility holding a current [to whom a] license, registration or accreditation issued by the board, to engage in an activity regulated under this Act.

(25) Orthosis--A custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of neuromuscular or musculoskeletal disease, injury, or deformity. The term does not include a fabric or elastic support, corset, arch support, low-temperature plastic splint, a truss, elastic hose, cane, crutch, soft cervical collar, orthosis for diagnostic or evaluation purposes, dental appliance, or other similar device carried in stock and sold by a drugstore, department store, or corset shop.

(26) Orthotic facility--A physical site, including a building or office, where the orthotic profession and practice normally take place.

(27) Orthotics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician, chiropractor, or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(28) Orthotist in charge--An orthotist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the orthotic practice in the facility.

(29) Person--An individual, corporation, partnership, association, or other organization.

(30) Practitioner—A person licensed under the Act as a prosthetist, orthotist, or prosthetist/orthotist.

(31) Profession of prosthetics or orthotics--Allied health care medical services used to identify, prevent, correct, or alleviate acute or chronic neuromuscular or musculoskeletal dysfunctions of the human body that support and provide rehabilitative health care services concerned with the restoration of function, prevention, or progression of disabilities resulting from disease, injury, or congenital anomalies. Prosthetic and orthotic services include direct patient care, including consultation, evaluation, treatment, education, and advice to maximize the rehabilitation potential of disabled individuals.

(32) Prosthesis--A custom-fabricated or fitted medical device that is not surgically implanted and is used to replace a missing limb, appendage, or other external human body part, including an artificial limb, hand, or foot. The term does not include an artificial eye, ear, finger, or toe, a dental appliance, a cosmetic device, including an artificial breast, eyelash, or wig, or other device that does not have a significant impact on the musculoskeletal functions of the body.

(33) Prosthetics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed physician, chiropractor, or podiatrist.

(34) Prosthetic facility--A physical site, including a building or office, where the prosthetic profession and practice normally take place.

(35) Prosthetic/Orthotic facility--A physical site, including a building or office, where the prosthetic and orthotic professions and practices normally take place.

(36) Prosthetist in charge--A prosthetist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics in the facility.

(37) Prosthetist/Orthotist in charge--A prosthetist/orthotist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics and orthotics in the facility.

(38) Registered orthotic technician--A person registered under this Act who fabricates, assembles, and services orthoses under the direction of a licensed orthotist, licensed

prosthetist/orthotist, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(39) Registered prosthetic technician--A person registered under this Act who fabricates, assembles, and services prostheses under the direction of a licensed prosthetist, licensed prosthetist/orthotist, licensed prosthetist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of a technician.

(40) Registered prosthetic/orthotic technician--A person registered under this Act who fabricates, assembles, and services prostheses and orthoses under the direction of a licensed prosthetist, a licensed orthotist, a licensed prosthetist/orthotist, or a licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(41) Texas resident--A person whose home or fixed place of habitation to which one returns after a temporary absence is in Texas.

### §821.3. Board's Operation.

(a) – (e) (No change.)

(f) Policy against discrimination. The board shall discharge its statutory authority without discrimination based on a person's race, color, disability, gender, genetic information, religion, age, or national origin.

(g) – (h) (No change.)

(i) Reimbursement for expense.

(1) A board member is entitled to compensation for lodging, meals and transportation expenses, at the rate designated by the latest General Appropriations Act passed by the Texas Legislature.

(2) Payment to board members of per diem and transportation expenses shall be requested on official state travel vouchers that the executive director has approved.

(3) A board member is entitled to a compensatory per diem as authorized by Government Code, §659.032.

(4) The associate commissioner for health care quality and standards of the department, or his or her designee, shall approve board-approved requests prepared on appropriate forms from staff for out-of-state travel for board activities.

(5) Attendance at conventions, meetings, and seminars must be clearly related to the performance of board duties and show benefit to the state.

(j) – (l) (No change.)

(m) Elections.

(1) At the meeting held after August 31 of the odd-numbered years, the board shall elect by a majority vote of those members present and voting, a presiding officer and a secretary.

(2) – (3) (No change.)

(n) – (o) (No change.)

#### §821.4. Public Information.

(a) (No change.)

(b) Requests for information. The public may obtain copies of board newsletters, brochures, pamphlets, press releases and other board publications by written request to the attention of the executive director or the Public Information Committee at the board's current mailing address.

(1) – (3) (No change.)

(4) Upon written request, the executive director will certify public records of the board. The cost for certifying copies of public records provided pursuant to the Open Records Act shall be determined by the department for each record or document. This cost shall be in addition to other costs charged for providing the requested document or record, including, but not limited to, copying, retrieving, or mailing of the document or record.

(5) (No change.)

(c) (No change.)

#### §821.5. Fees.

(a) (No change.)

(b) Schedule of fees. The board has established the schedule of fees as follows:

(1) – (12) (No change.)

(13) prosthetic or orthotic facility accreditation or accreditation renewal—\$400;

(14) – (15) (No change.)

(16) orthotic or prosthetic examination--shall be determined by the Texas Department of Health (department) and shall consist of the examination fee in accordance with the current examination contract plus an administrative fee;

(17) upgrade for student registrant, provisional licensees and temporary licensees after passing the examination:

(A) one category--\$200;

(B) two categories--\$300;

(18) license reinstatement following suspension of a license under the Family Code--the renewal fee for the license or registration and an additional \$100;

(19) returned check--\$25;

(20) written license/certification verification--\$25 each;

(21) adding orthotics or prosthetics to a facility accreditation issued in one category, including the designation of a practitioner in charge for the new category--\$400;

(22) changing the location or name of an accredited facility--\$400;

(23) changing the ownership of an accredited facility--\$400: and

(24) changing the name of the on-site practitioner in charge of an accredited facility--\$100.

(c) – (d) (No change.)

#### §821.6. General Application Procedures.

(a) Purpose. The purpose of this section is to set out the application procedures, provided for in the Texas Orthotics and Prosthetics Act, (Act), Texas Occupations Code, §§605.252-605.255 and §§605.257-605.259. Unless the context clearly shows otherwise, use of the terms license, licensure, and licensing shall apply to both licenses and registrations.

(b) (No change.)

(c) Required application materials.

(1) – (6) (No change.)



(7) The technician applicant must sign a statement acknowledging that he or she may only practice in accordance with the definition for registered orthotic technician, registered prosthetic technician, or registered prosthetic/orthotic technician, as set out in §821.2 (38)-(40) of this title (relating to Definitions), under the supervision of a licensed prosthetist, licensed orthotist, or licensed prosthetist/orthotist whose license is current, otherwise the technician is subject to disciplinary action as set forth in §821.39 of this title. This statement must include the names and signatures of the clinical supervisors and must have been executed within 30 days of the date the applicant submitted the application to the board.

(8) (No change.)

(d) (No change.)

(e) Determination of eligibility. The board shall make the final determination on the eligibility of all applicants. The board may delegate approval of applications for licensing or registration to the executive director or a committee of the board. All applications approved by a committee or the executive director are subject to ratification at the next regular meeting of the board.

(f) Disapproved applications. Should the board disapprove an application, the reasons for disapproval will be stated in writing. The applicant may file further information for the board's consideration regarding the applicant's qualifications for the license. The board may disapprove an application if the applicant:

(1) has not met the eligibility and application requirements for the license for which application was made;

(2) has failed to pass the examination prescribed in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist), if required to qualify for the license for which application was made;

(3) has failed to remit required fees;

(4) has failed or refused to properly complete or submit application form(s) or endorsement(s) or has knowingly presented false or misleading information on the application form, or other form or documentation required by the board to verify the applicant's qualifications for a license;

(5) has obtained or attempted to obtain a license issued under the Act by bribery or fraud;

(6) has made or filed a false report or record made in the person's capacity as a prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, prosthetist/orthotist assistant, prosthetic technician, orthotic technician, prosthetic/orthotic technician;

(7) has intentionally or negligently failed to file a report or record required by law;

(8) has intentionally obstructed or induced another to intentionally obstruct the filing of a report or record required by law;

(9) has engaged in unprofessional conduct including the violation of the prosthetic and orthotic standards of practice of established by the board in §821.41 of this title (relating to Professional Standards and Disciplinary Provisions);

(10) has developed an incapacity that prevents prosthetic or orthotic practice with reasonable skill, competence, or safety to the public as the result of:

(A) an illness;

(B) drug or alcohol dependency; or

(C) another physical or mental condition or illness.

(11) has failed to report a known violation of the Act by another person to the department;

(12) has violated a provision of the Act, a rule adopted under the Act, an order of the board previously entered in disciplinary proceedings, or an order to comply with a subpoena issued by the board;

(13) has had a license revoked, suspended, or otherwise subjected to adverse action or been denied a license by another licensing authority in another state, territory, or country;

(14) has been convicted of or pled nolo contendere to a crime directly related to prosthetic and/or orthotic practices;

(15) has been excluded from participation in Medicare, Medicaid, or other federal or state cost-reimbursement programs due to fraudulent activities; or

(16) has committed a prohibited act under the Act, §§605.351-605.353.

(g) Applications proposed for disapproval. If the board determines that the application should not be approved, the executive director shall give the applicant written notice of the reason for the proposed disapproval and of the opportunity for a formal hearing as set out in §821.39(h) of this title. Within fourteen days after receipt of the written notice, the applicant shall give written notice to the executive director to waive or request a hearing. If the applicant fails to respond within fourteen days after receipt of the notice of opportunity or if the applicant notifies the executive director that the hearing be waived, the board shall finally deny the application.

(h) Reapplication after denial. An applicant whose application has been disapproved under subsection (f) (4)-(16) of this section may reapply after one year from the disapproval date and shall submit a current application, the application fee and proof, satisfactory to the board, of compliance

with the requirements of these rules and the provisions of the Act in effect at the time of reapplication.

(i) Defaulters on Texas guaranteed student loans. The board will issue an initial license to a qualified applicant who has defaulted on a Texas guaranteed student loan. The board will not renew the license until a repayment plan has been reached with the Texas Guaranteed Student Loan Corporation (TGSLC) and a copy of the certification of the repayment agreement from TGSLC is filed with the board office.

(j) Application processing.

(1) The board shall comply with the following procedures in processing applications for a license.

(A) The following times shall apply from receipt of a completed application and acceptance date for filing or until the date a written notice is issued stating the application is deficient and additional specific information is required. A written notice of application approval may be sent instead of the notice of acceptance of a complete application. The times are as follows:

(i) letter of acceptance of application for renewal--21 days; and

(ii) letter of application deficiency--21 days.

(B) The following times shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The times for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The times are as follows:

(i) letter of approval--42 days; and

(ii) letter of denial of license or registration--90 days.

(2) The board shall comply with the following procedures in processing refunds of fees paid to the board.

(A) In the event an application is not processed in the times stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of fees paid in that particular application process. The applicant should apply to the executive director for reimbursement. If the executive director does not agree that the time has been violated or finds that good cause existed for exceeding the time, the request will be denied.

(B) Good cause for exceeding the time is considered to exist if the number of applications for licensure, registration or renewal exceeds by 15% or more, the applications processed in the same calendar quarter the preceding year; another public or private entity relied

upon by the board in the application process caused the delay, or another condition exists giving the board good cause for exceeding the time.

(3) If the executive director denies a request for reimbursement under paragraph (2) of this subsection the applicant may appeal to the board for a timely resolution of a dispute arising from a violation of the times. The applicant shall give the board written notice, at the board's address, that the applicant requests full reimbursement of fees paid because his or her application was not processed within the applicable time. The executive director shall submit a written report of the facts related to the processing of the application and of good cause for exceeding the applicable time. The board shall provide written notice of the decision to the applicant and the executive director. The board shall decide an appeal in favor of the applicant if the applicable time was exceeded and good cause was not established. If the board decides the appeal in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) The times for contested cases related to the denial of licensure, registration or renewal are not included with the times listed in paragraph (1) of this subsection. The time for conducting a contested case hearing runs from the date the board receives a written hearing request until the board's decision is final and appealable. A hearing may be completed within three to nine months, but may be shorter or longer depending on the particular circumstances of the hearing, the workload of the department and the scheduling of board meetings.

#### §821.7. General Licensing Procedures.

(a) (No change.)

(b) Issuance of licenses.

(1) – (4) (No change.)

(5) A student registration shall be issued or renewed for a two year period, unless issued or renewed under §821.27(e) or (f) of this title (relating to Student Registration).

(c) License and license display.

(1) – (4) (No change.)

(d) Copying or verifying the license.

(1) (No change.)

(2) A licensee shall only allow his or her license to be copied for licensure verification by employers, licensing boards, professional organizations and third party payers for credentialing and reimbursement purposes. The licensee shall sign, date and clearly mark copies with the word "COPY" across the face of the document. Any persons may verify a license by accessing the board's web page or contacting the board's office in writing or by phone to verify licensure. The license

verification fee as set out in §821.5 of this title (relating to Fees) must be paid before any written verification is provided.

(e) – (g) (No change.)

#### §821.9. Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

(a) (No change.)

(b) Required examination. To qualify for a license, an applicant must pass a competency examination, unless the applicant qualified for licensure under §821.15 of this title (relating to Acquiring Licensure as a Uniquely Qualified Person), or the applicant holds a license in a state that has licensing requirements that are equal to or exceed the requirements of §821.17 of this title (relating to Licensing by Examination).

(c) (No change.)

(d) Applications for examination.

(1) The board shall notify an applicant whose license application has been approved for the examination. Approval to take the examination shall be limited to the three-year period after the date of the board's notification to the applicant, unless specifically extended by action of the board. An applicant who was approved for the examination under §821.25 of this title (relating to Provisional License) may not take the examination after January 1, 2005.

(2) The board or its designee shall forward an examination registration form to the approved applicants at least 30 days before a scheduled examination. An applicant who wishes to take a scheduled examination must complete the registration form and return it to the board or its designee by the established deadline. The applicant shall submit the examination fees as set out in §821.5 of this title (relating to Fees) at the time specified by the board or its designee.

(e) – (h) (No change.)

(i) Failures.

(1) An applicant who fails the initial examination prescribed by the board may take two subsequent examinations after paying the examination fees.

(2) – (4) (No change.)

(j) Qualifications for initial examination. The applicant must:

(1) – (2) (No change.)

(3) be within 700 hours of completing the clinical residency or clinical experience requirements as described in §821.17 of this title (relating to Licensing by Examination). The entire

clinical residency or clinical experience must be completed before the applicant may be issued a license.

#### §821.15. Acquiring Licensure as a Uniquely Qualified Person.

(a) Purpose. The purpose of this section is to describe the unique qualifications a person must possess to qualify for licensure as a prosthetist, orthotist or prosthetist/orthotist under the Orthotics and Prosthetics Act, (Act) §605.254(a)(2).

(b) Unique qualifications. A uniquely qualified person means a resident of the State of Texas who, through education, training and experience, is as qualified to perform prosthetic and/or orthotic care as those persons who obtain licensure pursuant to the Act, §605.252.

(1) (No change.)

(2) The board will not approve a person as possessing unique qualifications who has not provided comprehensive orthotic care and/or comprehensive prosthetics care to the extent required by the Act, §605.254(a).

(c) – (e) (No change.)

#### §821.17. Licensing by Examination.

(a) (No change.)

(b) General requirements. To qualify for a license an applicant must successfully complete:

(1) (No change.)

(2) the clinical experience (if completed before January 1, 2005) or residency requirements for the requested license; and

(3) (No change.)

(c) – (e) (No change.)

(f) Post-graduate requirements for the orthotist license.

(1) The applicant must submit an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1,900 hours of clinical orthotic residency as described in §821.31 of this title (relating to Standards, Guidelines and Procedures for a Professional Clinical Residency), or 4,500 hours of post graduate clinical experience if applying under subsection (c)(2) of this section before January 1, 2005. The 4,500 hours of clinical experience must be completed by January 1, 2005.

(2) If any of the clinical requirements are completed in Texas, the supervising orthotist(s) or prosthetist/orthotist(s) must be licensed in accordance with this title.

(g) Post-graduate requirements for the prosthetist license.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1,900 hours of clinical prosthetic residency as described in §821.31 of this title, or 4,500 hours of post graduate clinical experience if applying under subsection (d)(2) of this section. The 4,500 hours of clinical experience must be completed by January 1, 2005.

(2) If any of the clinical requirements are completed in Texas, the supervising prosthetist(s) or prosthetist/orthotist(s) must be licensed in accordance with this title.

(h) Post-graduate requirements for the prosthetist/orthotist license.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) and orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1,900 hours of clinical orthotic residency and not less than 1,900 hours of clinical prosthetic residency as described in §821.31 of this title, or 4,500 hours of post graduate clinical experience in each discipline if applying under subsection (e)(2) of this section. The 4,500 hours of clinical experience in each discipline must be completed by January 1, 2005.

(2) If any of the clinical requirements are completed in Texas, the supervising prosthetist(s) and orthotist(s) or prosthetist/orthotist(s) must be licensed in accordance with this title.

(i) Additional post-graduate requirements in prosthetics for an applicant licensed as an orthotist.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1,900 hours of clinical prosthetic residency as described in §821.31 of this title, or 4,500 hours of post-graduate clinical experience if applying under subsection (d)(2) of this section. The 4,500 hours of clinical experience in prosthetics must be completed by January 1, 2005.

(2) If any of the clinical requirements are completed in Texas, the supervising prosthetist(s) or prosthetist/orthotist(s) must be licensed in accordance with this title.

(j) Additional post-graduate requirements in orthotics for an applicant licensed as a prosthetist.

(1) The applicant must submit an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1,900 hours of clinical orthotic residency as described in §821.31 of this

title, or 4,500 hours of post graduate clinical experience if applying under subsection (c)(2) of this section. The 4,500 hours of experience in orthotics must be completed by January 1, 2005.

(2) If any of the clinical requirements are completed in Texas, the supervising orthotist(s) or prosthetist/orthotist(s) must be licensed in accordance with this title.

§821.19. Licensed Prosthetist Assistant, Licensed Orthotist Assistant, or Licensed Prosthetist/Orthotist Assistant.

(a) Purpose. The purpose of this section is to establish the scope of practice and the qualifications for licensure for a licensed assistant under the Orthotics and Prosthetics Act, (Act), §605.255.

(b) Scope of practice.

(1) A licensed orthotist assistant provides ancillary patient care services under the supervision of a licensed orthotist or licensed prosthetist/orthotist. The supervising licensed orthotist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed orthotist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title (relating to Definitions), while under the direct supervision of a practitioner licensed in the appropriate category. Other than as set forth in this subsection, the supervising licensed orthotist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed orthotist assistant as the supervisor determines. However, the responsibility of the supervisor always specifically extends to having disciplinary action taken against the license of the supervising licensed orthotist or supervising licensed prosthetist/orthotist for violations of the Act or these rules committed by the licensed assistant.

(2) A licensed prosthetist assistant provides ancillary patient care services under the supervision of a licensed prosthetist or licensed prosthetist/orthotist. The supervising licensed prosthetist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed prosthetist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title, while under the direct supervision of a practitioner licensed in the appropriate category. Other than as set forth in this subsection, the supervising licensed prosthetist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed prosthetist assistant as the supervisor determines. However, the responsibility of the supervisor always specifically extends to having disciplinary action taken against the license of the supervising licensed prosthetist or supervising licensed prosthetist/orthotist for violations of the Act or these rules committed by the licensed assistant.

(3) (No change.)

(4) Assistants may only practice in a facility accredited under §821.29 of this title (relating to Accreditation of Prosthetic and Orthotic Facilities), or a facility that is exempt under the Act, §605.260(e).



(c) Qualifications for licensure as an assistant. The applicant must submit evidence satisfactory to the board of having completed the following:

(1) (No change.)

(2) a clinical residency for assistants of not less than 1,000 hours in prosthetics or 1,000 hours in orthotics, completed in a period of not more than six consecutive months, in a facility that is accredited under §821.29 of this title (relating to Accreditation of Prosthetic and Orthotic Facilities) or a facility that is exempt under the Act, §605.260(e). The resident shall practice under the direct supervision of a licensed prosthetist, licensed orthotist or licensed prosthetist/orthotist, depending on the type of residency. A licensed assistant may supervise a clinical resident, provided a licensed orthotist, licensed prosthetist or licensed prosthetist/orthotist assumes responsibility for the acts of the licensed assistant and the clinical resident. The supervisor's license must be in the same discipline being completed by the clinical resident.

(A) – (E) (No change.)

(d) Beginning and ending a clinical residency for an assistant. Before undertaking a clinical residency for an assistant, the supervisor and clinical resident must notify the board by filing a complete supervision agreement with the board on a form prescribed by the board. The supervisor shall provide the clinical resident and the board with written documentation upon beginning, terminating or completing a clinical residency. If terminating or completing a residency, the written documentation shall indicate the number of hours, which comply with this section that were completed by the clinical resident.

#### §821.21. Technician Registration.

(a) Purpose. The purpose of this section is to describe the eligibility requirements for a registration as a prosthetic technician or an orthotic technician issued under the Orthotics and Prosthetics Act, (Act), Texas Occupations Code, §605.259.

(b) (No change.)

(c) General requirements for technician registration. To qualify for a registration as a technician, an applicant must submit:

(1) – (2) (No change.)

(3) documentation, acceptable to the board, showing that the applicant has not less than one thousand hours of laboratory experience as:

(A) a prosthetic technician. The experience claimed must meet the definition of the “registered prosthetic technician” as described in §821.2 of this title (relating to Definitions); or

(B) an orthotic technician. The experience claimed must meet the definition of the “registered orthotic technician” as described in §821.2 of this title.

#### §821.23. Temporary License.

(a) Purpose. The purpose of this section is to describe the eligibility requirements for a temporary license as a prosthetist, orthotist, or prosthetist/orthotist issued under the Orthotics and Prosthetics Act, (Act), Texas Occupations Code, §605.257.

(b) General requirements. To qualify for a temporary license, a person must:

(1) have become a Texas resident as defined in §821.2 of this title (relating to Definitions), within the 12 month period preceding application for a temporary license;

(2) apply for a license as a prosthetist, orthotist or prosthetist/orthotist under §821.15 of this title (relating to Acquiring Licensure as a Uniquely Qualified Person) or §821.17 (relating to License by Examination); and;

(3) have either:

(A) practiced orthotics regularly since January 1, 1996; or

(B) been licensed as a prosthetist, orthotist, or prosthetist/orthotist by the state governmental licensing agency in the state in which the applicant resided immediately preceding the applicant's move to Texas. The licensing requirements in that state must be equal to or exceed the requirements of this title.

(c) Requirements for continued practice in Texas. To continue practicing prosthetics and/or orthotics the temporary license holder must meet the requirements of either §821.15 of this title or §821.17 of this title and pass the appropriate board examination as set out in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist). The examination must be passed while the temporary license is current and not expired.

(d) (No change.)

(e) Renewal requirements. A temporary license may be renewed once for one additional one year period if the applicant:

(1) (No change.)

(2) is registered to take the next scheduled examination or has taken an examination under §821.9 of this title during the year immediately preceding the date of the application for temporary license renewal; or

(3) (No change.)

(f) (No change.)

#### §821.25. Provisional License.

(a) Purpose. This section describes the eligibility requirements for a provisional license as a prosthetist or orthotist issued under the Orthotics and Prosthetics Act, (Act), Texas Occupations Code, §605.263. This section and all provisional licenses issued under this section expire January 1, 2005.

(b) General requirements. To qualify for a provisional license an applicant must:

(1) be practicing comprehensive prosthetic and/or orthotic care in Texas, and not be in violation of the Act or these rules;

(2) not meet the requirements for licensing as a prosthetist or orthotist by October 1, 1998, as described in the Act, §605.254(b);

(3) not be exempt under §§605.301-605.305 of the Act;

(4) be actively engaged in completing the:

(A) examination requirements in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist);

(B) education requirements in subsections (c), (d) or (e) of §821.17 of this title (relating to Licensing by Examination); or

(C) clinical residency requirements in §821.31 of this title (relating to Standards, Guidelines, and Procedures for a Professional Clinical Residency);

(c) – (d) (No change.)

(e) Renewal requirements.

(1) – (2) (No change.)

(3) The procedures described in §821.33(b)(3)-(6) and (c)-(g) of this title (relating to License Renewal) shall apply to the renewal of a provisional license.

(f) (No change.)

(g) Examination required. To continue practicing prosthetics and/or orthotics on or after January 1, 2005, the provisional license holder must meet the requirements of §821.17 of this title (relating to Licensing by Examination and pass the appropriate board examination as set out in

§821.9 of this title. The examination must be passed on or before January 1, 2005, while the provisional license is current and not expired.

(h) Expiration date. This section expires January 1, 2005.

#### §821.27. Student Registration.

(a) Purpose. Student registration provides the person practicing the prosthetic and/or orthotic profession with legal authorization while fulfilling the postgraduate requirements for licensure by examination.

(b) Eligibility. The board shall issue or renew a student registration certificate to a person who:

(1) – (2) (No change.)

(3) has completed the academic requirements for a license as a prosthetist, an orthotist, or prosthetist/orthotist, as described in §821.17 of this title (relating to Licensing by Examination); and

(4) is actively engaged in either:

(A) (No change.)

(B) completing the clinical experience described in subsections (c)(1), (d)(1) or (e)(1) of §821.17 of this title; or

(C) applying for or awaiting the results of the appropriate examination, as set out in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist) and has completed the clinical residency or clinical experience.

(c) The board shall refuse to issue or renew a student registration if the person is not actively engaged in completing the professional clinical residency, the clinical experience, or the examination.

(d) Issuance.

(1) An applicant may be issued one initial student registration in each area: prosthetics, orthotics, or both, depending on the type of clinical residency or clinical experience. The applicant shall note on the application form if the residency is in prosthetics, orthotics, or both.

(2) – (3) (No change.)

(e) – (i) (No change.)

NEW §821.28. Upgrading a Student Registration, Temporary License or Provisional License.

(a) Application of section. Unless the content clearly indicates otherwise, the term licensee, when used in this section shall include a student registrant, a temporary licensee and a provisional licensee. The term license shall include a student registration, temporary license or provisional license.

(b) Requirements. A license may be upgraded to the regular renewable practitioner license after the licensee:

(1) meets the requirements of §821.17 of this title (relating to License by Examination);

(2) passes the appropriate examination, as set out in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist); and

(3) submits the license upgrade fee, as set out in §821.5 of this title (relating to Fees).

(c) Notice to eligible licensees. The board shall send a notice to a licensee who passes the exam of the procedure and the fee required for upgrading a license.

§821.29. Accreditation of Prosthetic and Orthotic Facilities.

(a) Requirement for practice setting of licensees.

(1) A person licensed under the Orthotics and Prosthetics Act, (Act), Texas Occupations Code, Chapter 605, who practices in Texas shall practice only in facilities accredited under the Act, unless the type of practice is exempted by the Act, §§605.301-605.305, or the facility is exempted by the Act, §605.260(e).

(2) A facility shall not be required to achieve accreditation under this section if the facility or person(s) providing health care services at the facility do not perform or hold itself or themselves out as performing or offering to perform prosthetics and/or orthotics as defined in the Act, §605.002, or §821.2 of this title (relating to Definitions).

(b) Purpose of facility accreditation. The purpose of accreditation is to identify for prospective patients, referral sources, and third-party payers which prosthetic and/or orthotic facilities meet the board's requirements. This section is adopted under the Act, §605.260. All facilities where orthotics and prosthetics are provided by persons licensed or registered under this title must be accredited under these rules, unless the facility is exempted under the Act, §605.260(e).

(c) Accreditation application.

(1) Accreditation applications must include the following information:

(A) – (F) (No change.)

(G) a scaled floor plan indicating the total square feet in the facility;

(H) the name and Texas license number of the prosthetist, orthotist, or prosthetist/orthotist who is designated as the on-site practitioner in charge and his or her notarized signature. A person who holds a temporary or provisional license or a student registration may not serve as the on-site practitioner in charge;

(I) the name and Texas license number of other licensees of this Act who practice in the facility;

(J) the signature of the on-site practitioner(s) in charge of the facility; and

(K) photographs of each room or hallway clearly showing wheelchair accessibility and privacy for patients.

(2) – (6) (No change.)

(d) (No change.)

(e) Requirements for accredited facilities.

(1) – (4) (No change.)

(5) An accredited facility must be under the clinical on-site direction of a prosthetist, orthotist, or prosthetist/orthotist licensed by the board in the discipline in which the facility sought accreditation. The person shall supervise the provision of prosthetics or orthotics in accordance with the Act and rules and shall be considered the person in charge. To change the designation of the on-site practitioner(s) in charge, the facility shall notify the board in writing of the name and license number of the new on-site practitioner(s) and the date the effective date of the change. The written notice shall be accompanied by the appropriate fee as set out in §821.5 of this title (relating to Fees). The notice and fee shall be submitted to the board before the change is effective.

(6) (No change.)

(7) A facility accredited under the Act shall always prominently display a sign in letters equal to or larger in size or font as the sign provided by the board to each accredited facility, containing the name, mailing address and telephone number of the board, a statement informing consumers that complaints against licensees of the facility may be directed to the board, and the toll-free telephone number for presenting complaints to the board about a person or facility regulated or requiring regulation under the Act.

(8) An accredited facility is required to report to the board any change regarding the on-site prosthetist, orthotist, or prosthetist/orthotist who is clinically directing the facility within 30

days after it occurs. The information provided to the board shall be accompanied by the appropriate fee as set out in §821.5 of this title (relating to Fees).

(9) – (10) (No change.)

(f) – (g) (No change.)

(h) Renewal of accreditation.

(1) – (5) (No change.)

(6) The board shall issue an accreditation renewal to a facility that has met the requirements for renewal. It shall be affixed to or displayed with the original accreditation and is the property of the board.

(i) (No change.)

(j) Reinstatement of accreditation. When a facility fails to renew its accreditation by the expiration date, the facility is subject to the procedures and fees as follows:

(1) – (2) (No change.)

(3) If the facility accreditation has been expired for more than one year, the facility may not renew the accreditation. The facility must submit an application for accreditation as described in subsection (c) of this section in order to obtain board accreditation.

(k) Disciplinary actions.

(1) – (2) (No change.)

(3) A revocation or suspension of an accreditation may affect all facilities accredited under the same name, the same owners, or the same corporation.

(4) (No change.)

(l) – (n) (No change.)

(o) Safety.

(1) – (3) (No change.)

(4) Lab/Fabrication area must be separated from other areas by walls and/or rigid doors and have adequate ventilation and lighting.

(5) – (6) (No change.)

(p) – (q) (No change.)

(r) Adding a category to a facility accreditation. To add the prosthetic or orthotic category to a facility accreditation, which is not expired, suspended or revoked, an application shall be completed and submitted to the board on a form provided by the board. The application shall be accompanied by the appropriate fee as set out in §821.5 of this title.

#### §821.31. Standards, Guidelines and Procedures for a Professional Clinical Residency.

(a) ( No change.)

(b) Length of clinical residency. The residency shall consist of at least 1,900 hours in orthotics or prosthetics, including a research project. The 1,900 hours in each discipline must be completed in a period of not more than two consecutive years.

(c) – (e) (No change.)

(f) Responsibilities of the program director.

(1) (No change.)

(2) The program director shall maintain documentation of residents' agreements.

(3) The program director shall supervise residents during patient care. Direct supervision of critical care events is required. Indirect supervision of clinical procedures, except critical care events, is allowed throughout the residency. The supervision must be provided by a practitioner licensed in Texas in the discipline being taught. Overall assurance of quality patient care is the ultimate responsibility of the supervising practitioner.

(4) Evaluation of a resident's ability to assume graded and increasing responsibility for patient care must be completed quarterly. This determination is the program director's responsibility, in consultation with members of the teaching staff. The facility administration shall assure that, through the director and staff, each program:

(A) – (C) (No change.)

(D) provides documentation to the resident, at least quarterly, and to the board upon request and at the termination or completion of the residency, regarding the number of hours of residency that comply with the requirements established in this section that have been completed by the resident.

(g) – (h) (No change.)

#### §821.33. License Renewal.



(a) Application. This section applies to licensees and registrants of the board. Unless the text clearly says otherwise, use of the term licensee shall include both licensees and registrants, and use of the term license shall include both licenses or registrations.

(b) General. Paragraph (1) of this subsection does not apply to renewal of a provisional or temporary license or a student registration.

(1) When issued, an initial license is valid until the licensee's next birth month, unless the issue date would occur within six months of the licensee's birth month. In those cases the license shall be issued for the one to six-month period plus the next full year. After the initial license period, a licensee must renew the license biennially (every other year).

(2) The license renewal form for licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and misdemeanor and felony convictions. The supervising licensed prosthetist or orthotist shall sign the license renewal form for the licensed assistant or registered student and show on the form whether the supervisor and supervisee have complied with these rules.

(3) Licensees are responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the executive director before the expiration date of the licensee shall not excuse failure to file for renewal or late renewal.

(4) The board shall not renew the license of the licensee who is violating the Act or board rules at the time of application for renewal. The renewal of a license shall not be granted to a licensee for whom a contested case is pending, but shall be governed by the Government Code, §2001.054.

(5) The board shall not renew a license or registration if Education Code, §57.491 (Loan Default Ground for Nonrenewal of Professional or Occupational License) prohibits renewal.

(6) The board shall deny renewal of the license or registration if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, §232.002 (Suspension of License).

(c) License renewal requirements.

(1) At least 45 days before the expiration date of a person's license, the executive director shall send notice to the licensee at the address in the board's records, of the expiration date of the license, the amount of the renewal fee due and a license renewal form that the licensee must complete and return to the board with the required renewal fee. The return of the completed renewal form following the requirements of paragraph (3) of this subsection shall be considered confirmation of the receipt of renewal notification.

(2) The license renewal form for licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and misdemeanor and felony convictions. The supervising licensed prosthetist or orthotist shall sign the license renewal form for the licensed assistant and show on the form whether the supervisor and supervisee have complied with these rules.

(3) A licensee has renewed the license when the licensee has mailed the renewal form, the required renewal fee, and the statement of continuing education, if required, to the executive director before the expiration date of the license. The postmark date shall be considered as the date of mailing. The current license will be considered active until the renewal is issued or finally denied.

(4) A licensee must comply with applicable continuing education requirements to renew a license including the audit process described in §821.35 of this title (relating to Continuing Education). Continuing education shall not be required if the applicant is renewing a temporary or provisional license or a student registration.

(5) The board shall issue a license certificate to a licensee who has met the renewal requirements.

(d) Late renewal requirements.

(1) The executive director shall inform a person or facility that has not renewed a license after a period of more than 30 days after the expiration of the license of the amount of the fee required for late renewal and the date the license expired.

(2) A person or facility whose license has expired may renew the license before the first anniversary date of the license expiration by submitting the license renewal form, the person's proof of completion of continuing education as set out in §821.35 of this title, a statement describing how the person or facility complied with the Orthotics and Prosthetics Act after the license expired, and the appropriate late renewal fee to the executive director. The renewal is effective if mailed to the executive director on or before the first anniversary of the license expiration date. The postmark date shall be considered as the date of mailing.

(A) If paid less than 91 days after the expiration date, the fee due is equal to one and one-half times the renewal fee as set out in §821.5 of this title (relating to Fees).

(B) If paid 91 days or more after the expiration date but before the first anniversary of the expiration date, the fee due is equal to two times the renewal fee as set out in §821.5 of this title.

(C) After the license is renewed the next continuing education reporting period starts on the date the certificate is renewed and continues until the next expiration date.

(3) A person or facility whose license has been expired more than one year may not renew the license. The person or facility may obtain a new license by complying with the current requirements and procedures for obtaining an original license.

(4) After a license is expired and until a person has renewed the certificate, a person may not practice orthotics or prosthetics in violation of the Act.

(5) After an accreditation is expired and until the facility has renewed the accreditation, the facility may not provide orthotic or prosthetic patient care in violation of the Act.

(e) Expiration of license.

(1) A person whose license has expired may not use the title or represent or imply that he or she has the title of "licensed orthotist," "licensed prosthetist," "licensed prosthetist/orthotist," "licensed orthotist assistant," "licensed prosthetist assistant," "licensed prosthetist/orthotist assistant," or use the letters "LO," "LP," "LPO," "LOA," "LPA," or "LPOA," and may not use facsimiles of those titles.

(2) A person who fails to renew a license after one year is required to surrender the license certificate and identification card to the board.

(3) A facility that fails to renew its accreditation shall not represent or imply that the facility is accredited by the board.

(4) A facility that fails to renew its accreditation after one year is required to surrender the accreditation certificate to the board.

(f) Active duty. If a licensee fails to timely renew his or her license because the licensee is or was on active duty with the armed forces of the United States of America serving outside the State of Texas on the license expiration date, the licensee may renew the license in accordance with this subsection.

(1) The licensee, the licensee's spouse, or an individual having power of attorney from the licensee may request renewal of the license. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the licensee was on active duty serving outside the State of Texas on the license expiration date shall be filed with the board along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the board along with the renewal form if the individual having the power of attorney executes documents required in this subsection.

(5) A licensee renewing under this subsection shall pay the applicable renewal fee, but not the reinstatement fee or a penalty fee.

(6) A licensee renewing under this subsection shall be required to submit the same amount of continuing education hours as required for regular renewal unless the licensee shows to the satisfaction of the board that a hardship existed which prevented the licensee from obtaining the continuing education hours. Hardships may include medical reasons, combat duty, or assignment to a location where continuing education activities were not available.

(g) Defaulters on Texas guaranteed student loans. The board will not renew the license until a repayment agreement has been reached with the Texas Guaranteed Student Loan Corporation (TGSLC) and a copy of the certification of the repayment agreement from TGSLC is filed with the board office.

#### §821.35. Continuing Education.

(a) – (d) (No change.)

(e) Determination of continuing education credits.

(1) For seminars, lectures, presentations, symposia, workshops, conferences and similar activities, 50 minutes shall be considered as one credit and increments of five minutes shall be considered as one-tenth of a credit.

(2) (No change.)

(f) Requirements. Licensees shall attend and complete continuing education each renewal period unless the licensee is exempted under subsection (m) of this section.

(1) (No change.)

(2) Licensees shall be responsible for maintaining a log or other list of continuing education credits earned by the licensee and proof of completion of his or her own continuing education credits, which might include certificates, transcripts from certifying agencies or associations, letters from program sponsors concerning the licensee's attendance and participation, or other documentation satisfactory to the board verifying the licensee's attendance or participation.

(3) (No change.)

(g) (No change.)

(h) Acceptable topics. The hours must be directly related to prosthetics, orthotics, physical or occupational therapy, orthopedic, podiatric, pedorthic, physical medicine or other subjects approved by the board which benefit patient care or service delivery.

(i) (No change.)

(j) Reporting of continuing education credit.

(1) (No change.)

(2) All licensees may be audited or a representative sample of the licensees renewing during each month may be selected at random for auditing continuing education credits. The following procedures shall apply to the audit.

(A) (No change.)

(B) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the board, verifying the licensee's attendance, participation and completion of the continuing education credits claimed on the report form.

(C) (No change.)

(3) (No change.)

(k) Failure to complete the required continuing education at renewal time.

(1) – (2) (No change.)

(3) Credits earned to complete the continuing education requirements for renewal during the additional three months shall only be applied to that continuing education period. Credit may not be carried over to the next period. The next continuing education reporting period starts on the day after the continuing education requirements were fulfilled and continues until the next expiration date.

(l) (No change.)

(m) Qualifying exemptions from the continuing education requirements.

(1) The following licensees are exempt from the requirements of this section if the qualifying event occurred during the 24 months immediate preceding the license expiration date. The licensee is responsible for submitting an affidavit stating the licensee meets the criteria for the exemption accompanied by proof satisfactory to the board:

(A) a licensee who served in the regular armed forces of the United States of America or who served in the armed forces reserves and was called to active duty for a period of more than 60 days during a continuing education period;

(B) – (C) (No change.)

(2) – (3) (No change.)

(n) – (o) (No change.)

(p) Credits for examiners. A licensee serving as a clinical examination examiner for the American Board for Certification in Orthotics and Prosthetics (ABC) may use credits awarded by the ABC toward the continuing education requirements of this section.

(1) A licensee who is awarded at least 20.0 credits for the first time orientation and training is completed may apply 20.0 credits toward the requirements for of this section for the continuing education period in which the orientation and training were completed. The credits will be limited to 20 credits for the first time.

(2) A licensee may earn up to five credits for each continuing education period thereafter that the licensee serves as an ABC examiner.

(3) The board will accept a statement provided by the ABC as proof of completion of the examiner duties.

#### §821.37. Change of Name and Address.

(a) Notification required. Applicants, licensees, registrants and accredited facilities are responsible for notifying the board of any change(s) of name or preferred mailing address. Accredited facilities are responsible for notifying the board of any change(s) in facility name, preferred mailing address or physical address. Written notification to the board shall be made within 30 days of any change(s).

(b) Address changes. Address changes shall include the name, mailing address, and zip code.

(c) Name changes. Before the board will issue another license certificate and identification card, notification of name changes must be mailed to the board. Notification shall include a copy of a marriage certificate, court decree evidencing the change, or a Social Security card reflecting the licensee's or registrant's new name. The licensee, registrant or accredited facility shall remit the appropriate license, registration or facility accreditation certificate replacement fee as set out in §821.5 of this title (relating to Fees).

#### §821.39. Complaints.

(a) Filing of complaints.

(1) Anyone may complain to the department alleging that a person has violated the Orthotics and Prosthetics Act, (Act), Texas Occupations Code, Chapter 605 or these rules.

(2) A person wishing to file a complaint against a person licensed by the board or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the executive director's office. The mailing address is, Texas Board of Orthotics and Prosthetics, 1100 West 49th Street, Austin, Texas 78756-3183. Telephone: (512) 834-4520.

(3) Upon receipt of a complaint, the executive director shall send to the complainant an acknowledgment letter and, if additional information is needed, the board's complaint form, for the complainant to complete and return to the executive director. If the complaint is made by a visit to the executive director's office, the form may be given to the complainant then.

(4) The department shall investigate anonymous complaints if the complaint provides sufficient information and if the information relates to a violation of the Act or this chapter.

(b) Investigation of complaints.

(1) The executive director is responsible for resolving complaints.

(2) The department shall investigate a complaint as requested by the executive director, and report the findings to the executive director.

(3) If the executive director determines that the complaint does not come within the board's jurisdiction, the executive director shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency.

(4) The executive director, on behalf of the board, shall, at least as frequently as quarterly, notify the complainant and the respondent of the status of the complaint until its final disposition.

(5) The executive director may recommend that a license be revoked, suspended, or application be denied, or that the licensee be placed on probation or that other appropriate action as authorized by law be taken.

(6) The board may delegate the authority to the executive director to dismiss a complaint. The executive director shall dismiss the complaint and give written notice of the dismissal to the complainant, respondent, and other interested parties if the executive director determines that insufficient grounds exist to support the complaint.

(7) The executive director may issue letters of warning or advisory letters for minor violations of the Act or these rules. These letters may be used as evidence at a disciplinary hearing held concerning conduct of a person committed after receipt of the letter.

(c) Board assistance in processing complaints.

(1) The presiding officer may appoint one board member who is a licensed orthotist and one board member who is a licensed prosthetist to help the executive director in processing complaints. The board may overrule an appointment only upon the vote of four board members to do so.

(2) The presiding officer may appoint one or more licensed prosthetists and orthotists who are not board members to serve as consultants to the executive director. These appointments are

subject to the approval by a majority of the board. The consultants may not be paid for their services.

(3) The executive director may call upon one appointed board member and one or more consultants for assistance to resolve a particular complaint, as needed.

(4) Board members who participate in processing a complaint will not participate in the decision concerning a final order in that matter.

(5) An appointed board member or consultant will review the complaint and the proposed action by the executive director when revocation, suspension, or denial of licensure is proposed.

(d) Board oversight of processing complaints.

(1) The executive director will prepare and present a report reflecting the status of the complaints received to the board at each board meeting.

(2) The report will include the number of complaints received, the nature of the complaints made, action taken on the complaint, and the extent to which appointed board members or consultants have helped in processing complaints.

(3) The board will either approve or not approve the executive director's report and provide guidance to help the executive director in processing complaints as appropriate.

(e) Formal disciplinary actions.

(1) The board may take the following formal disciplinary action for a violation of the Act or these rules: deny a license, registration, or facility accreditation; suspend or revoke a license, registration, or facility accreditation; probate the suspension of a license, registration, or facility accreditation; issue a reprimand to a licensee, registrant, or accredited facility, or impose a civil penalty pursuant to the Act, §605.354.

(2) The board shall take into consideration the following factors in determining the appropriate action to be imposed in each case:

(A) Severity of the offense, as follows:

(i) Severity Level I violations are those that have or had no significance or a minor significance on health or safety.

(ii) Severity Level II violations are those that have or had the potential to cause an adverse impact on the health or safety of a patient or client, but did not actually have an adverse impact.



(iii) Severity Level III violations are those that have or had an adverse impact on the health and safety of a patient or client;

(B) the danger to the public;

(C) the number of repetitions of offenses;

(D) the length of time since the date of the violation;

(E) the number and type of disciplinary actions taken against the licensee, registrant or accredited facility;

(F) the length of time the licensee has practiced orthotics or prosthetics;

(G) the length of time the registrant has practiced orthotics or prosthetics or worked as a technician,

(H) the length of time the facility has provided orthotics or prosthetics;

(I) the actual damage, physical or otherwise to the patient, client or other person in the workplace;

(J) the deterrent effect of the penalty imposed;

(K) the effect of the penalty upon the livelihood of the licensee, registrant or accredited facility;

(L) any efforts for rehabilitation by the licensee or registrant;

(M) any corrections or changes in the operation of or the staffing of the facility

(N) any other mitigating or aggravating circumstances.

(3) Before institution of formal disciplinary action the department shall give written notice by certified mail, return receipt requested, and regular mail, of the facts or conduct alleged to warrant the proposed action, and the licensee, registrant, or accredited facility shall be given an opportunity to show compliance with the requirements of the Act and these rules.

(4) The written notice will be sent to the last reported address on record for the licensee, registrant, or accredited facility, and state that a request for a formal hearing must be received, in writing, within 14 days of the date of the notice, or the right to a hearing shall be waived and the action shall be taken by default. Notice sent to the last reported address is deemed received by the licensee, registrant, or accredited facility, and a default order may be entered upon failure to timely request a hearing whether or not the notice was received.

(f) Informal hearings.

(1) A licensee, registrant, or accredited facility may request that the executive director consider holding an informal hearing. The executive director has the discretion to grant or deny this request, and will grant the request only if it appears that an informal hearing may resolve the disciplinary matter.

(2) An assigned board member or consultant may attend the informal hearing if requested to do so by the executive director.

(3) The complainant and other interested parties with knowledge of relevant facts will be notified if an informal hearing is to be held, and may attend.

(4) The informal hearing will be conducted in the manner established by the executive director and consistent with department procedures. Parties will be afforded a reasonable opportunity to present their position regarding the matter at issue.

(g) Formal hearings.

(1) If requested in accordance with subsection (e) of this section, a formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, and 25 Texas Administrative Code, Chapter 1 (Texas Board of Health).

(2) Copies of the formal hearing procedures are indexed and filed in the executive director's office, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas 78756-3183, and are available for public inspection during regular working hours.

(h) Agreed orders.

(1) Disciplinary actions may be resolved by agreed order any time.

(2) The executive director may negotiate the terms of an agreed order with the licensee, registrant, or accredited facility; however, the agreed order is not effective until accepted by the board.

(i) Probation. Any reasonable term or condition of probation may be included in an order.

§821.41. Professional Standards and Disciplinary Provisions.

(a) General. This section is adopted under the Orthotics and Prosthetics Act, (Act), §605.353.

(b) – (c) (No change.)

(d) Unprofessional or unethical conduct. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed for unprofessional or unethical conduct, as defined in subsections (b) and (c) of this section. Other action which may cause a license, registration, or facility accreditation to be denied, not renewed, revoked, suspended, or a civil penalty to be imposed include, but are not limited to:

(1) – (7) (No change.)

(8) intentionally or negligently failing to supervise and maintain supervision of clinical or technical personnel, licensed or unlicensed, in compliance with the Act and these rules, or negligently failing to provide on-site supervision for an accredited facility, if designated as the practitioner in charge of the facility;

(9) – (24) (No change.)

(25) fitting a prosthesis or orthosis inaccurately or modifying the prescription without authorization from the prescribing physician;

(26) providing orthotic care in a non-exempt facility that is not accredited in orthotics by the board;

(27) providing prosthetic care in a non-exempt facility that is not accredited in prosthetics by the board;

(28) failing to truthfully respond in a manner that fully discloses all information in an honest, materially responsive and timely manner to a complaint filed with or by the board; and

(29) other unprofessional or unethical conduct.

(e) Gross negligence or malpractice. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed for gross negligence or malpractice, which includes, but is not limited to, the following.

(1) (No change.)

(2) Performing an act or omission constituting malpractice, such as:

(A) failing to perform services or provide products for which compensation has been received or failing to perform services or provide products with reasonable care, skill, expedience, and faithfulness;

(B) (No change).

(f) – (g) (No change.)

(h) Disciplinary actions. A license, registration, or facility accreditation may be denied, not renewed, revoked, suspended, or a civil penalty may be imposed for violations of this Act or these rules. The executive director may issue a reprimand, a letter of concern, an advisory letter, or a cease and desist letter.

#### §821.43. Licensing Persons with Criminal Backgrounds.

(a) Purpose. The purpose of this section is to comply with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the Texas Occupations Code, Chapter 53. This section is designed to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain licenses. Unless the text clearly says otherwise, use of the term licensee shall include both licensees and registrants, and use of the term license shall include both licenses or registrations.

(b) Guidelines. The board may deny an application or revoke, suspend, or place on probation an existing license or registration if an applicant, licensee, or registration holder has been convicted of a crime (felony or misdemeanor) according to the following guidelines.

(1) (No change.)

(2) The factors and evidence listed in the Texas Occupations Code, Chapter 53, shall be considered in determining eligibility for a license or registration.

(3) The executive director will review the criminal convictions and determine what disciplinary action should be taken, and may ask that an appointed board member or consultant help in making the decision. The executive director shall give written notice to the person that the board intends to deny, suspend, or revoke the license after hearing in accordance with the provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the Texas Occupations Code, Chapter 53. The written notice must include:

(A) the reasons for the decision;

(B) notice that the person, after exhausting administrative appeals, may file an action in district court of Travis County, Texas for review of the evidence presented to the department and its decision;

(C) notice that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable; and

(D) notice of the earliest date the person may appeal.

(c) (No change.)

#### §821.45. Default Orders.

(a) If a right to a hearing is waived under §821.39 of this title (relating to Complaints), the board shall consider approving an order taking appropriate disciplinary action against the licensee or applicant as described in the written notice to the licensee or applicant.

(b) – (c) (No change.)

§821.47. Surrender of License.

(a) Voluntary surrender.

(1) – (3) (No change.)

(b) – (c) No change.)

§821.49. Suspension of License Under the Family Code.

(a) This section carries out the provision of the Family Code, Chapter 232 (Suspension of License).

(b) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support or failure to comply with a court order related to child custody, the executive director shall immediately determine if the board has issued a license to the person named on the order, and, if a license has been issued:

(1) – (3) (No change.)

(c) – (i) (No change.)

§821.51. Civil Penalty.

(a) A person who violates the Texas Orthotics and Prosthetics Act, (Act), Texas Occupations Code, Chapter 605 is subject to a civil penalty of \$200 for the first violation and \$500 for each subsequent violation. At the request of the board, the attorney general shall bring an action in the name of the state to collect a civil penalty under this section.

(b) Each day a violation of the Act, §605.251 and §§605.351-605.353 continues is a separate violation for the purpose of this section.

(c) (No change.)

§821.53. Program Accessibility.

Board programs will be available in the English language. Any individual may access the board's programs including board meetings and examinations in a language other than English if the individual provides an interpreter or translator at the individual's expense. The Office of Language Services, or other appropriate office within the department is contacted for assistance with unique foreign language requests.

§821.55. Consumer Notification.

Display of notice of licensure shall be as follows.

(1) All licensees, registrants and accredited facilities shall prominently display a notice in a waiting room or other area where it shall be visible to the patients. This notice shall be posted at all facilities where the licensee(s) practices and all board accredited facilities. This does not include facilities that the licensee visits to treat patients, such as hospitals, nursing homes or patients' homes.

(2) The notice shall be printed on a sign in letters equal to or larger in size or font as the sign provided by the board to each accredited facility. Script or calligraphy prints are not allowed. The notice shall be worded according to the following specifications.

Figure: 25 TAC, §821.55(2) (No change.)

§821.57. Petition for the Adoption of a Rule.

(a) General. The following procedures shall apply to the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) – (4) (No change.)

(5) The executive director shall submit the petition to the board for its consideration and disposition at the first regular board meeting scheduled after receipt of the petition. If the next meeting is within 10 days of the date the petition is received, the executive director shall submit the petition to the board at the next regular meeting of the board.

(c) Denial or acceptance of the petition. The board may deny or accept the petition in whole or in part.

(1) If the board denies the petition, the executive director will notify the petitioner in writing of the board's action to deny and state the reason(s) for the denial.

(2) If the board accepts the petition the board will initiate the rule making process within 120 days from the date of submission of the petition under the Administrative Procedures Act, Government Code, Chapter 2001, Subchapter B.

(d) Subsequent petitions to adopt the same or similar rule. The executive director may refuse to forward subsequent petitions for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

These amendments, new section and repeals are effective November 27, 2002.